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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,373	04/08/2004	John H. Starkey	6009-4701	7639

7590 09/29/2005  
MORGAN & FINNEGAN, L.L.P.  
345 Park Avenue  
New York, NY 10154-0053

EXAMINER
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RAEVIS, ROBERT R

ART UNIT	PAPER NUMBER
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2856

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/820,373

Applicant(s)

STARKEY, JOHN H.

Examiner

Robert R. Raevis

Art Unit

2856



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7 is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

### DETAILED ACTION

The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81. No new matter may be introduced in the required drawing.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,5,6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tveter, deceased et al.

Tveter teaches a method, including: testing an ore from "the same source" (col. 6, line 46) by applying "tests" (col. 6, line 48) of EXAMPLE 5 and "additional tests" (col. 6, line 45) of EXAMPLE 6.

The reference does not expressly suggest that the material drawn from the "same source" can be taken as a single sample.

As to claim 1, it would have been obvious to removed a single sample from the "source" for testing to provide for the individual samples for EXAMPLE 5 and EXAMPLE 6 because one of ordinary skill might be inclined to remove one larger sample from the source in one action, and subsequently use that larger sample to provide sub-samples for each of the testing EXAMPLES in an attempt to reduce the number of steps

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necessary to carry out testing from the same source. Finally, please note that the claim is limited to the steps provided after the work "comprising" (line 3 of claim 1).

As to claims 5,6, Tveter refers (col. 1, line 56) to 500 gram samples, suggestive of at least a 1 kg sample to provided two (2) individual 500 gram sub-samples. In addition, it is known to retest material to assure that test results are accurate, suggestive of a need for a greater sample size.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Polizzotti.

Polizzotti teaches (col. 6, lines 45-48) testing an ore sample via two testing procedures. Finally, please note that the claim is limited to the steps provided after the work "comprising" (line 3 of claim 1).

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Rosenblum et al.

Rosenblum et al teach testing moisture of ore employing the steps of transmitting force (col. 3, line 8) and "processing" (col. 3, line 10). Finally, please note that the claim is limited to the steps provided after the work "comprising" (line 3 of claim 1).

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenblum et al.

As to claims 5,6, it would have been obvious to test moisture of 6-9 kg because (Rosenblum's ) conveyor belt 14 commonly displace portions of ore in that range.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Johanson et al tests both "density" (col. 5, line 48) and "yield strength" (col. 5, line 52) of an "ore" sample.

Hudson makes two measurements 11,15 on "ores" (col. 5, line 15) in a method to test angle repose.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Statement in view of Pennington.

Applicant describes (pages 1-2) testing ore with both Bond ball mill test and JK impact test, but does not state that the sample for the testing is taken from the same sample.

As to claims 1-5, it would have been obvious obtain a sample for testing with Pennington's sampler because Pennington teaches that a representative ore sample may be obtained by using of a scoop. The material sampled from the scoop is representative of the ore on a conveyor, suggestive of use of that ore for testing.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert R. Raavis whose telephone number is 571-272-2204. The examiner can normally be reached on Monday to Friday from 7am to 4pm. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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